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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

KAREN MOU, ANITA WILLIS, on behalf of
themselves and those similarly situated,

Plaintiffs,

vs.

SSC SAN JOSE OPERATING COMPANY
LP, SSC PITTSBURG OPERATING
COMPANY LP, SSC OAKLAND EXCELL
OPERATING COMPANY LP, SSC
NEWPORT BEACH OPERATING
COMPANY LP, SSC CARMICHAEL
OPERATING COMPANY LP, SSC
TARZANA OPERATING COMPANY LP,
SAVASENIORCARE LLC, SAVASENIOR
CARE ADMINISTRATIVE SERVICES,
LLC, SAVASENIORCARE CONSULTING,
LLC, SSC DISBURSEMENT COMPANY,
LLC and DOES 1-10,

Defendants.

Case No. 5:18-cv-01911-EJD (NC)

CLASS ACTION

**ORDER RE: DISCOVERY PLAN AND
RESOLVING DISCOVERY DISPUTE**

Judge: Hon. Nathanael M. Cousins

ORDER

1. PURPOSE

3 This Order resolves a discovery dispute (ECF 71, 73) with dueling proposed orders (ECF
4 75, 76) for an ESI discovery plan in this case. The Court held a hearing on the dispute on
5 September 11. This Order is derived from the proposed order filed by defendants. It is guided by
6 the need for an ESI discovery plan to guide the parties justly and efficiently through the discovery
7 process, with discovery of information proportional to the needs of the case under Fed. R. Civ. P.
8 26. The Court set a further discovery hearing for October 30, 2019, at 1:00 p.m. to follow up on
9 the implementation of this plan. No costs or fees are awarded.

2. COOPERATION

11 The parties must be mindful of the importance the Court places on cooperation and commit
12 to cooperate in good faith throughout the matter. With respect to ESI, cooperation must be
13 consistent with this Court's Guidelines for the Discovery of ESI.

3. LIAISONS

15 The parties have previously identified and consulted with liaisons (e.g., in-house counsel,
16 members of Defendants' information technology systems executive team, and third party e-
17 discovery vendors) who are and will be knowledgeable about and responsible for discussing their
18 respective ESI. The parties' e-discovery liaisons must be, or have access to those who are,
19 knowledgeable about the technical aspects of e-discovery, including the location, nature,
20 accessibility, format, collection, search methodologies, and production of ESI in this matter. The
21 parties must rely on the liaisons, as needed, to confer about ESI and to help resolve disputes
22 without court intervention.

4. PRESERVATION

24 The Court finds that the preservation obligations described below are reasonable and
25 proportionate to the needs of this matter. To reduce the costs and burdens of preservation and to
26 ensure proper ESI is preserved, the Court orders:

1 1.2. Defendants will preserve ESI for the following custodians:

2 • Remedios Tibayan, Administrator
3 • Corazon Obillo, Administrator
4 • Antonio Moya, Administrator
5 • Teodora Chua, Director of Nursing
6 • Glenda Cabrera, Director of Nursing
7 • Zenaida Francisco, Director of Nursing
8 • Agnes Romito, Social Services Manager
9 • Mary Ruvalcaba, District Director of Clinical
10 • Lisa Favre - Manager, Policy & Procedure Development
11 • Wynn Sims, Vice President and Secretary
12 • Michael Ruback, District Director of Operations
13 • Wayne Sanner, former President
14 • Michael Oxford, SVP Operations

15 1.3. The parties shall add or remove custodians as reasonably necessary, after
16 conferring in accordance with Sections (2) and (3), set forth above.

17 **5. SEARCH**

18 The search parameters for this initial phase of discovery, which this Court finds meet the
19 immediate needs of this matter, are set forth in Section (7), below. With respect to subsequent
20 searches, if any are warranted, the parties must meet and confer about methods to search ESI in
21 order to identify ESI that is subject to production in discovery and filter out ESI that is not subject
22 to discovery. Plaintiffs, for example, have proposed additional search terms in their proposed
23 order, ECF 76. The Court has not ordered these terms to be searched at this time, but the parties
24 must continue to confer with each other as the discovery process unfolds.

25 **6. PRODUCTION FORMATS**

26 The parties will produce documents in standardized TIFF Concordance load files and PDF
27 format otherwise. If particular documents warrant a different format, the parties will cooperate to
28 arrange for the mutually acceptable production of such documents. The parties must not degrade

1 the searchability of documents as part of the document production process.

2 **7. PHASING**

3 In accordance with this Court's Guidelines for the Discovery of ESI, the Court finds that
4 the initial phase of discovery described below is reasonably aimed at producing information from
5 sources most likely to contain relevant information, while postponing or avoiding discovery from
6 sources less likely to contain relevant and discoverable information. *See* ESI Discovery
7 Guidelines, Guideline 2.02(d). Further, the Court finds that, to the extent additional discovery is
8 warranted, the parties should utilize this initial production as a sample for assessing how to
9 structure further discovery (e.g., revised search terms, additional custodians, additional sources of
10 information, etc.). *See* ESI Discovery Guidelines, Guideline 2.02(f).

11 With respect to email discovery, Defendants will run the following search terms, which are
12 narrowly tailored to subject matter of Plaintiff's lawsuit:

- 13 • "facility initiated"
- 14 • "Last covered day"
- 15 • "Mrs. Mou"
- 16 • "Ms. Mou"
- 17 • "plan of correction" w/20 "discharge"
- 18 • "POC" w/20 discharge
- 19 • "resident initiated"
- 20 • Chin-Li w/10 Mou
- 21 • Discharge
- 22 • Karen w/10 Mou

23 These search terms will be run against the following facility level custodians, who may
24 have been involved in any communications about discharge decisions at the facility, including
25 communications about Plaintiff's discharge and communications with other corporate defendants
26 about all discharges from the facility:

- 27 • Remedios Tibayan, Administrator
- 28 • Corazon Obillo, Administrator

- 1 • Antonio Moya, Administrator
- 2 • Teodora Chua, Director of Nursing
- 3 • Glenda Cabrera, Director of Nursing
- 4 • Zenaida Francisco, Director of Nursing
- 5 • Agnes Romito, Social Services Manager

6 These search terms hit on 2,221 documents, which must thereafter be reviewed for
7 relevance and privilege and produced by Friday, September 13, 2019. Following the initial
8 production, Plaintiff's must thereafter review and assess the documents and confer with
9 Defendants as to what additional searches are warranted, if any. The parties must continue to
10 prioritize the order of subsequent productions in a reasonable manner.

11 With respect to other document productions (i.e., outside of email databases), Defendants
12 must produce the following documents by Friday, September 27, 2019:

- 13 • Subleases for SSC Newport Beach Operating Company LP and SSC Carmichael
14 Operating Company LP
- 15 • Back Office Services Agreement for SSC Newport Beach Operating Company LP
16 and SSC Carmichael Operating Company LP
- 17 • Consulting Services Agreement for SSC Newport Beach Operating Company LP
18 and SSC Carmichael Operating Company LP
- 19 • SSC San Jose Operating Company LP (“Courtyard”) discharge notices held on site

20 Following the initial production, Plaintiff's must thereafter review and assess the
21 documents and confer with Defendants as to what additional searches are warranted, if any. The
22 parties must continue to prioritize the order of subsequent productions in a reasonable manner.
23 The parties are encouraged to utilize depositions under Fed. R. Civ. P. 30(b)(6) to facilitate
24 efficient discovery.

25 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

26 Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected
27 document, whether inadvertent or otherwise, is not a waiver of privilege or protection from
28 discovery in this case or in any other federal or state proceeding. For example, the mere

1 production of privileged or work-product-protected documents in this case as part of a mass
2 production is not itself a waiver in this case or in any other federal or state proceeding.

3 Communications involving trial counsel that post-date the filing of the complaint need not be
4 placed on a privilege log.

5 **9. MODIFICATION**

6 This Order may be modified by further Court Order for good cause shown. A discovery
7 status hearing is set October 30, 2019, at 1:00 p.m., in San Jose courtroom 5.

8 **IT IS SO ORDERED.**

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10 Dated: September 11, 2019


11 HON. NATHANAEL M. COUSINS
12 Judge of the Northern District of California
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